

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MINNESOTA**

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RICKY LEE McDEID,

Civil No. 05-911 (RHK/SRN)

Petitioner-Appellant,

v.

**ORDER**

DEAN MOONEY,

Respondent-Appellee.

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This matter is presently before the Court on Petitioner's application for a Certificate of Appealability, (which has been construed to serve as a formal Notice of Appeal as well). (Docket Nos. 27.) Also before the Court at this time is Petitioner's application for leave to proceed in forma pauperis, ("IFP"), on appeal. (Docket No. 28.)

A. Certificate of Appealability

A habeas corpus petitioner is not permitted to seek appellate review of his claims without first securing a Certificate of Appealability, ("COA"). 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22(b)(1). In this case, Petitioner will not be granted a COA at this time, because there presently is no appealable order or judgment that is subject to appellate review. The judgment of dismissal that was previously entered in this case, (Docket No. 23), was vacated at Petitioner's request, and Petitioner filed his current appeal before any new judgment was entered. Thus, there is no final judgment for the Court of Appeals to review at this time. For this reason, Petitioner's current request for a COA will be denied.

B. IFP Application

Because Petitioner was granted IFP status when he commenced this action in the District Court, he is automatically entitled to IFP status on appeal, unless the District Court affirmatively certifies otherwise. Fed. R. App. P. 24(a)(3). Although the Court is satisfied that Petitioner has no meritorious grounds for taking an appeal at this time, it appears that he is still eligible for IFP status. Therefore, Petitioner does not need any further authorization from the Court in order to proceed IFP on appeal. However, to eliminate any possible doubt about the matter, the Court will grant Petitioner's pending motion to proceed IFP.

Based upon the foregoing, and all of the files, records and proceedings herein,

IT IS HEREBY ORDERED that:

1. Petitioner's application for a Certificate of Appealability in this matter, (Docket No. 27), is DENIED; and
2. Petitioner's application for leave to proceed in forma pauperis on appeal, (Docket No. 28), is GRANTED.

Dated: November 7, 2005

s/Richard H. Kyle

RICHARD H. KYLE

United States District Court Judge